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TACTICS & TECHNIQUES IN THE TRIAL OF A CASE

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Vincent Bugliosi Trial Techniques Outline

- Bugliosi retreated into writing late in his career
- He'd defend someone who were guilty if he were the only lawyer around, but there's so many lawyers willing to defend them
 - Supports natural justice
- Basic, fundamental principles of trial practice
 - If the Simpson lawyers had done what we're talking about would have improved their performance
- Single most important factor in trials – preparation
 - An abysmal lack of preparation by many trial lawyers
 - He kept surprising himself with wins because he was simply more prepared than others
 - More than just interviewing, listening to reports, etc. – that's the fun part – it's reducing everything you intend to present in court, and the manner in which you intend to present it to a yellow pad of paper
 - Either people use no notes or notes are woefully sketchy and inadequate
 - The information is unorganized and undigested
 - The sequence should NOT be lawyer to jury, but lawyer to pad to jury
 - You need to put time and sweat into your process—figuring out how you are going to ask questions
 - Figuring out the right words and right pauses take time, and cannot often come out at trial—have that awkward pause at home working it out
 - Almost without exception, the lawyer is going to forget one or more points that are going to be crucial – don't walk out of trial remembering what you forgot
 - “The palest ink is better than the best memory”
 - Write ideas down immediately

- This is not to say just read all your cross questions – if you’ve written things down and gone over them time and again, you will be so much more prepared
- 90% of the trial can be orchestrated before walking into the courtroom
 - The trial is acting out the script
 - Have rebuttals to objections ready
- Don’t buy the excuse that such preparation makes you inflexible
- Totally immerse yourself, work vigorously on the yellow pad
- Voir Dire
 - 1/3 art and skill and 2/3 luck
 - Asking questions about likes and dislikes, what they lean toward
 - Jurors enter voir dire quiet and formal—encourage them to speak up now – if they don’t tell them what their commitment is and then remind them
 - Don’t allow them to remain silent with closed questions
 - Ask about hobbies more than jobs
- Opening Statements
 - 70% of jurors have the same after opening statement as their rule
 - But closing statements are 10 times as important
 - Don’t bite off more than you can chew – this is a way you can trip up the other attorney
- Maintain credibility with the jury
 - Don’t argue – getting beat back by the judge will hurt your credibility with the jury
 - Bond with the jury, get them to like you – show your vulnerability
 - But this doesn’t work for Bugliosi, it has to be natural
 - Convey honesty, sincerity, substance, and stature
 - Story about defense attorney refusing to move from prosecutor’s chair
- Direct Examination
 - Jurors remember the first and last witness the most

- Once again, know answers through preparation – talk to them and interview them
- Cross Examination
 - Don't let the defense introduce damaging evidence – it will make you look like you're hiding evidence
 - Mistakes are being made by the “top” prosecutors in the country
 - Turn potentially damaging evidence into positives—the missing gun is the best evidence that X is the killer!
 - Often, experience and instinct are necessary because you must ask questions you don't know what the answer is
 - First elicit answers that make the witness appear to ask a certain way, and then ask what he actually did, and then follow that up with a why question.
 - Don't attack a witness that has yet to be sufficiently pinioned--you'll give him room to escape -- pin him down first with the above technique.
- Final Summation
 - Ask yourself at all times--what am I going to argue?
 - You should never be vigorously writing down notes at the end--you should have prepared this ahead of time.
 - Doing it this way give you months to prepare (for big cases, of course)
 - Some argue that this should be extemporaneous and not specifically prepared-- there is no reason that this should follow a different rule than was prepared before
 - Should be written out, or at least reduced to a comprehensible outline -- you need to have the articulations
 - Only real advantage is that you get to talk to the jury eye-to-eye
 - But, if the prosecutor gives the appropriate amount of time, it can appear to be extemporaneous
 - Simpson prosecutors were up until 4 am the night before preparing the summation, and then proceeded to give a lousy summation
 - Remember that juries are swayed by small points

- You need to state clearly that the defendant is, beyond a question, guilty -- "based on the evidence"
- Let the jury know that the evidence is clear, but when you get into the details of the evidence, explain away the weaknesses
- Rebuttal need not be a restricted argument at all--you can create a new argument